

**McGREGOR  
LEGERE & STEVENS**

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(617) 338-6464 ext. 120

**VIA CERTIFIED MAIL (# 7021 1970 0002 1310 0404)**  
**RETURN RECEIPT REQUESTED**  
**AND VIA E-MAIL ([Jill.Provencal@mass.gov](mailto:Jill.Provencal@mass.gov))**

March 28, 2023

Jill Provencal  
Wetlands and Waterways Section Chief  
MassDEP Northeast Regional Office  
150 Presidential Way  
Woburn, MA 01801

**RE: Request for Approval Superseding Order of Conditions  
Notice of Intent for Fernald Property Park (Phase 1) – 190 & 282 Trapelo Road  
Waltham, MA  
DEP File No. 316-0814**

Dear Ms. Provencal:

This Firm represents the City of Waltham's Recreation Department (the "Applicant"), with respect to the Notice of Intent filed on or about January 11, 2023 for Phase 1 of the redevelopment of the former state-owned Fernald Development Center site at 190 & 282 Trapelo Road; Phase 1 consists of a golf chipping range, and disc golf area with access road and parking area (the "Project")<sup>1</sup>. Arsen Hambardzumian, P.E., of Nesra Engineering, LLC filed the NOI on behalf of the Applicant for this Buffer Zone project.

We hereby request that the Department issue a Superseding Order of Conditions approving the Buffer Zone Project with reasonable conditions and not the many, multiple-pages of unreasonable conditions the Waltham Conservation Commission ("Commission") included in the Order of Conditions approving the Project issued on March 16, 2023 (the "Order"). The Order fails to comply with the Wetlands Protection Act, G.L. c. 131, § 40 ("Act") and the Act's implementing Regulations (310 CMR 10.00) (the "Regulations"). A copy of the Order of Conditions is attached hereto as Exhibit 1.

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<sup>1</sup> A memorial is also proposed as part of Phase 1 but is well outside any wetland resource area or buffer zone.

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Over a two-month period, the Commission held four public hearings on the Project and visited the Site. After it closed the public hearing on March 2, 2023, the Commission voted to approve the Project but with seven pages of special conditions and five additional pages of project-specific special findings and conditions – all well above and beyond the standard conditions in DEP’s Order of Conditions form. Many of these conditions are onerous, ultra vires to the Commission’s authority under the Act, and do little to nothing to protect the interests of the Act. Therefore, a Superseding Order of Conditions allowing the Project without such conditions should be issued.

This Request is filed in a timely manner, within ten business days after the issuance of the Order. It is filed in accordance with the provisions of 310 CMR 10.05(7)(a-d). As a city or subdivision of a town of the Commonwealth, the City is exempt from paying the filing fee for this appeal. 410 CMR 4.02 (definition of “Applicant” and “Person”).

The City has standing to make this Request pursuant to 310 CMR 10.05(7)(a)1. and 2. as the applicant, landowner, and for other reasons.

### **Project and Project Site**

The Walter E. Fernald Development Center was established by the Commonwealth in 1887 and closed in 2014, during which time it was developed into a large complex of buildings providing institutional care and services for individuals with developmental disabilities. The City of Waltham then purchased the approximately 196-acre site (the “Site”), with many abandoned and dilapidated buildings with the goal of rehabilitating certain buildings and restoring much of the site to natural conditions and making it available as a public recreation area. Currently a majority of the site is under the care and custody of the Waltham Recreation Department. Approximately 119 of the 194 acres the City acquired will be open space/recreation areas. The City has already removed numerous buildings and restored a significant portion of the site, including daylighting a stream, restoring wetlands, and enhancing a pond.

The Site is located on the southwest side of Trapelo Road in eastern Waltham and generally slopes southward. On the western portion of the Site, known as Malone Park, is a pond and a vegetated wetland which is unclear whether it is bordering. Bordering Vegetated Wetland (“BVW”) straddle portions of the western property line in several locations and extend onto the property.

Components of the proposed Phase I renovations that are within 100 feet of the two BVW along the western property line are a small portion of a golf chipping range, a parking lot and access road for the parking lot. Associated vegetation removal, grading, fencing, and installation of stormwater Best Management Practices are also partially within the 100-foot Buffer Zone. A small portion of the disc golf area is within a narrow portion of the Buffer Zone of the vegetated wetland to the northeast.

Most but not all existing abandoned and dilapidated buildings and paved roadway in the vicinity of the proposed renovations (but outside the Buffer Zone) have been demolished and

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removed, and the utilities have been capped and or abandoned. Some fencing, stone walls, concrete pads, etc., remain on the site, however, they are in poor condition and disrepair. To the extent possible, the City is reusing existing gravel roadway layouts and parking lots to avoid new site disturbances.

The proposed location of the chipping range consists of sloped hill, ledge protrusions, an abandoned playground, and a restroom building, as well as some utilities; the area is wooded around its perimeter. The proposed location of the disc golf is mostly wooded, with fencing along the property boundary, as well as boulders and trails.

While the total area for the proposed chipping range and disc golf is approximately 15 acres, only a very small portion – approximately 1.8 acres is within Buffer Zone. While originally work was to be within 15 feet of BVW, in response to comments from members of the Commission, the City agreed to move it farther back so it is now only within 25 feet and every effort has been made to be 50 feet away wherever possible.

The Applicant filed its Notice of Intent” (“NOI”) with the Waltham Conservation Commission on or about January 11, 2023.

The Commission opened the hearing on February 2, 2023, where the Applicant presented the Project and answered questions. The Commission then continued the hearing several times, with additional substantive presentation and discussions on February 16, 2023, March 2, 2023, and March 16, 2023. At their meeting on March 16, 2023, the Commission voted to close the public hearing and voted to allow the Project with nine pages of special conditions.

### **This Buffer Zone-only Project Protects the Interests of the Act**

This is a Buffer Zone-only project. Work is proposed no closer than 25 feet to BVW and effort has been made to provide 50 feet of separation wherever possible. The Project includes erosion and sedimentation controls in the form of silt sock to avoid alteration of the adjacent BVW.

Nevertheless, the Commission took it upon itself to include in its Order seven pages of special conditions that appear to be imposed on all projects and many of which are inapplicable to this Project. Moreover, the Commission also included five pages of findings and related special conditions that relate solely to this Project. Such conditions are onerous, ultra vires to the Commission’s authority under the Act, and do nothing to protect the interests of the Act.

### **The Onerous and Irrelevant Conditions**

The City objects to the following conditions listed on a five-page Supplement to the Order and ask that they not be included in any Superseding Order of Conditions approving the Project

- Finding and Condition # 2 – MEPA – The Commission wrongly attempts to administer the Massachusetts Environmental Policy Act (MEPA) by misconstruing general condition 3 on

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the DEP Order of Conditions form as giving the Commission the authority to require the applicant to provide: (1) information – a schematic plan – about the entire 194-acre site, most of which is beyond the Commission’s jurisdiction under the Act; (2) obtain written confirmation as to whether a MEPA filing would be required, and, if so, complete the MEPA process; and (3) provide copies of any required MEPA filings to the Commission. The Commission lacks the authority to impose such a condition. The City is aware of the requirements of MEPA and has no intention of evading such review, if the scope of the project so requires. However, it is not within the purview of the Conservation Commission to dictate how and when the City engages in such review.

- Finding and Condition # 3 – a CR – Whether a Conservation Restriction has been placed on the Project Site as might be required under the Community Preservation Act is something the Commission has no authority to enforce. The Wetlands Protection Act does not authorize the Commission to require an applicant to agree to a Conservation Restriction. Moreover, given the amount of time it takes to draft and get a Conservation Restriction approved, this requirement would significantly delay the start of construction. The City is familiar with its obligations under the Community Preservation Act and intends to comply with such requirements without the oversight of the Commission.
- Finding and Condition # 4 – Daily Rescue Inspection – Based on “news articles from around the country” about various bird species getting entangled in netting, the Commission requires the Applicant, prior to construction, to develop a written inspection and rescue plan for the Commission’s approval; install and maintain signage at the site; and provide reports to the Commission about each entanglement event. The Commission’s overly expansive interpretation of the Act’s wildlife habitat interest should not be condoned. The Commission lacks the authority to impose such a condition.
- Finding and Condition # 5 – Anticoagulant rodent poisons – Apparently strongly disagreeing with a purported rodent management plan by the City throughout the municipality, the Commission prohibits, in perpetuity, the use of anticoagulants or other poison within jurisdictional areas under the Act, and – further acting beyond its jurisdiction – requires the City to track and notify the Commission of use of such poisons elsewhere on the Site, as well as report on the number and location of dead predators anywhere on the site and the findings of wildlife officials as to the cause of such deaths. The Commission lacks the authority to impose such a condition.
- Finding and Condition # 7 – Fencing – This condition requires the proposed fencing to have gaps 6 inches high by 4 feet wide provided at ground level at the corners of the chipping range and midpoint of the long run along the west side of the chipping range. However, in light of the fact that there is a pond on the adjacent property and the City wishes to protect against the water hazard to small children, the City wishes this condition revised to require gaps be only 4 inches high.

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- Finding and Condition # 8 – Vegetation Replacement – The Commission demands that the applicant quantify the number of trees to be removed “in the jurisdictional area” and replace invasive trees 1:1 with native trees; replace neither native nor invasive 2:1 with native trees, and replace native trees 3:1 with native trees, as well as a “proportional number of shrubs and native groundcover plantings.” While the City fully intends to conduct appropriate replanting within the jurisdictional area, this requirement requires an excessive number of new plantings for the limited jurisdictional area at issue.
- Finding and Condition # 10 – Fence removal – The Commission requires the applicant to remove a fence which was not proposed to be removed in the NOI and which is not located on the Site, and also requires the Applicant to then submit revised plans documenting compliance with this condition.

We note that when the Commission in 2019 issued an Order of Conditions (DEP File # 316-0748) to allow for the daylighting of a stream and other ecological restoration activities involving work in resource areas, it did not include any supplemental findings and conditions it has for this Buffer Zone project. It only included its standard special conditions.

**Conclusion**

For the foregoing reasons, the City of Waltham Recreation Department requests that the Department issue a Superseding Order of Conditions approving the Project.

Thank you for considering this Request.

Very truly yours,

*Nathaniel Stevens*

Nathaniel Stevens

Exhibit 1: Order of Conditions

cc: Waltham Conservation Commission (via certified mail (7021 1970 0002 1310 0411)  
and email)

## EXHIBIT A



## Waltham Conservation Commission

119 School Street  
Waltham, Massachusetts 02451  
(781) 314-3845  
conservation@city.waltham.ma.us



March 16, 2023

Kim Scott  
City of Waltham – Recreation Department  
520 Moody Street  
Waltham MA 02453

Re: ORDER OF CONDITIONS, 190 & 282 Trapelo Road (DEP 316-0814)

Dear Ms. Scott,

Enclosed find the signed original of the WPA Form 5 – Order of Conditions (“OOC”) generated as a result of your filing a WPA Form 3 – Notice of Intent (“NOI”) with the Waltham Conservation Commission. A copy will be kept on file while another will be sent to the Massachusetts DEP Wetlands Program regional office.

Your NOI was discussed at the 2 March 2023 meeting of the Commission. A video recording of this meeting is available at [wcac.org](http://wcac.org). The minutes will be posted on the City of Waltham web site once they have been approved by the Commission.

The OOC lists standard requirements imposed on all approved projects within Wetlands Protection Act (MGL c. 131, s. 40) jurisdiction in Massachusetts. The OOC also includes the Standard Special Order of Conditions (SSOOC, v1.4, February 2022) issued to all approved projects in the City of Waltham. Any site-specific conditions unique to your filing will be listed on page 6 of the SSOOC in section 26.

Please note all conditions stipulated in the OOC and SSOOC and ensure that you and your contractor follow them accordingly. Failure to comply with these conditions may result in enforcement action. Note that some conditions continue in perpetuity and may require regular correspondence with the Commission to remain in compliance.

Unless explicitly specified, any work authorized by this OOC must be completed within 3 years of the issue date. An extension, if necessary, must be applied for not less than 30 days before this OOC expires.

This OOC must be recorded with the Registry of Deeds before any work can begin. It is the applicant’s responsibility to complete this and provide the recording information to the Commission.

Upon completion of the work authorized by this OOC, you are required to submit a Request for Certificate of Compliance (WPA Form 8A) to the Conservation Commission. Delays in recording the OOC or requesting a COC can result in the delay or denial of future permits or cause problems with the title of the affected parcel.

You have the right to appeal this OOC to the state Department of Environmental Protection. The form for this is included as part of the WPA 5.



Sincerely yours,

A handwritten signature in blue ink that reads "Philip S. Moser". The signature is written in a cursive, flowing style.

Philip S. Moser, PE  
Chairman (signed electronically)

CC (by email): Arsen Hambardzumian / Nesra Engineering; K. Laughman, City of Waltham

Attached: OOC for 190 & 282 Trapelo Road (DEP 316-0814)



**Massachusetts Department of Environmental Protection**  
**Bureau of Resource Protection - Wetlands**

**WPA Form 5 – Order of Conditions**

Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

Provided by MassDEP:

316-0814

MassDEP File #

eDEP Transaction #

Waltham

City/Town

**A. General Information**

Please note:  
 this form has  
 been modified  
 with added  
 space to  
 accommodate  
 the Registry  
 of Deeds  
 Requirements

**Important:**  
 When filling  
 out forms on  
 the  
 computer,  
 use only the  
 tab key to  
 move your  
 cursor - do  
 not use the  
 return key.



1. From: Waltham  
Conservation Commission

2. This issuance is for  
 (check one): a. ☒ Order of Conditions b. ☐ Amended Order of Conditions

3. To: Applicant:

Kim

a. First Name

Scott

b. Last Name

City of Waltham - Recreation Department

c. Organization

520 Moody Street

d. Mailing Address

Waltham

e. City/Town

MA

f. State

02453

g. Zip Code

4. Property Owner (if different from applicant):

a. First Name

b. Last Name

City of Waltham

c. Organization

510 Main Street

d. Mailing Address

Waltham

e. City/Town

MA

f. State

02452

g. Zip Code

5. Project Location:

190 & 282 Trapelo Road

a. Street Address

Waltham

b. City/Town

R045

c. Assessors Map/Plat Number

001 / 0001

d. Parcel/Lot Number

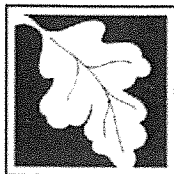
Latitude and Longitude, if known:

42.391604d m s

d. Latitude

71.214687d m s

e. Longitude



**Massachusetts Department of Environmental Protection  
Bureau of Resource Protection - Wetlands**

**WPA Form 5 – Order of Conditions**

Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

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**A. General Information (cont.)**

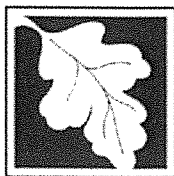
6. Property recorded at the Registry of Deeds for (attach additional information if more than one parcel):  
Middlesex (South)  
 a. County 64707 b. Certificate Number (if registered land) 427-432  
 c. Book          d. Page
7. Dates: 1/11/2023 3/2/2023 3/16/2023  
 a. Date Notice of Intent Filed b. Date Public Hearing Closed c. Date of Issuance
8. Final Approved Plans and Other Documents (attach additional plan or document references as needed):  
Fernald Property Improvement Project Phase I  
 a. Plan Title Nesra Engineering, LLC Arsen Hambardzumian, P.E.  
 b. Prepared By March 2023 c. Signed and Stamped by varies  
 d. Final Revision Date Drainage Report (under separate cover) e. Scale           
 f. Additional Plan or Document Title January, 2023  
 g. Date

**B. Findings**

1. Findings pursuant to the Massachusetts Wetlands Protection Act:
- Following the review of the above-referenced Notice of Intent and based on the information provided in this application and presented at the public hearing, this Commission finds that the areas in which work is proposed is significant to the following interests of the Wetlands Protection Act (the Act). Check all that apply:
- a. ☐ Public Water Supply b. ☐ Land Containing Shellfish c. ☒ Prevention of Pollution  
 d. ☐ Private Water Supply e. ☐ Fisheries f. ☒ Protection of Wildlife Habitat  
 g. ☒ Groundwater Supply h. ☒ Storm Damage Prevention i. ☐ Flood Control
2. This Commission hereby finds the project, as proposed, is: (check one of the following boxes)

**Approved subject to:**

- a. ☒ the following conditions which are necessary in accordance with the performance standards set forth in the wetlands regulations. This Commission orders that all work shall be performed in accordance with the Notice of Intent referenced above, the following General Conditions, and any other special conditions attached to this Order. To the extent that the following conditions modify or differ from the plans, specifications, or other proposals submitted with the Notice of Intent, these conditions shall control.



Massachusetts Department of Environmental Protection  
Bureau of Resource Protection - Wetlands

**WPA Form 5 – Order of Conditions**

Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

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**B. Findings (cont.)**

Denied because:

- b. ☐ the proposed work cannot be conditioned to meet the performance standards set forth in the wetland regulations. Therefore, work on this project may not go forward unless and until a new Notice of Intent is submitted which provides measures which are adequate to protect the interests of the Act, and a final Order of Conditions is issued. **A description of the performance standards which the proposed work cannot meet is attached to this Order.**
- c. ☐ the information submitted by the applicant is not sufficient to describe the site, the work, or the effect of the work on the interests identified in the Wetlands Protection Act. Therefore, work on this project may not go forward unless and until a revised Notice of Intent is submitted which provides sufficient information and includes measures which are adequate to protect the Act's interests, and a final Order of Conditions is issued. **A description of the specific information which is lacking and why it is necessary is attached to this Order as per 310 CMR 10.05(6)(c).**
3. ☒ Buffer Zone Impacts: Shortest distance between limit of project disturbance and the wetland resource area specified in 310 CMR 10.02(1)(a) 15  
a. linear feet

**Inland Resource Area Impacts:** Check all that apply below. (For Approvals Only)

Resource Area	Proposed Alteration	Permitted Alteration	Proposed Replacement	Permitted Replacement
4. <input type="checkbox"/> Bank	a. linear feet	b. linear feet	c. linear feet	d. linear feet
5. <input type="checkbox"/> Bordering Vegetated Wetland	a. square feet	b. square feet	c. square feet	d. square feet
6. <input type="checkbox"/> Land Under Waterbodies and Waterways	a. square feet	b. square feet	c. square feet	d. square feet
	e. c/y dredged	f. c/y dredged		
7. <input type="checkbox"/> Bordering Land Subject to Flooding	a. square feet	b. square feet	c. square feet	d. square feet
Cubic Feet Flood Storage	e. cubic feet	f. cubic feet	g. cubic feet	h. cubic feet
8. <input type="checkbox"/> Isolated Land Subject to Flooding	a. square feet	b. square feet		
Cubic Feet Flood Storage	c. cubic feet	d. cubic feet	e. cubic feet	f. cubic feet
9. <input type="checkbox"/> Riverfront Area	a. total sq. feet	b. total sq. feet		
Sq ft within 100 ft	c. square feet	d. square feet	e. square feet	f. square feet
Sq ft between 100-200 ft	g. square feet	h. square feet	i. square feet	j. square feet



Massachusetts Department of Environmental Protection  
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**WPA Form 5 – Order of Conditions**

Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

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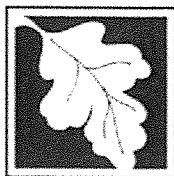
Waltham

City/Town

**B. Findings (cont.)**

**Coastal Resource Area Impacts:** Check all that apply below. (For Approvals Only)

	Proposed Alteration	Permitted Alteration	Proposed Replacement	Permitted Replacement
10. <input type="checkbox"/> Designated Port Areas	Indicate size under Land Under the Ocean, below			
11. <input type="checkbox"/> Land Under the Ocean	a. square feet	b. square feet		
	c. c/y dredged	d. c/y dredged		
12. <input type="checkbox"/> Barrier Beaches	Indicate size under Coastal Beaches and/or Coastal Dunes below			
13. <input type="checkbox"/> Coastal Beaches	a. square feet	b. square feet	c. $\frac{\text{cu yd}}{\text{nourishment}}$	d. $\frac{\text{cu yd}}{\text{nourishment}}$
14. <input type="checkbox"/> Coastal Dunes	a. square feet	b. square feet	c. $\frac{\text{cu yd}}{\text{nourishment}}$	d. $\frac{\text{cu yd}}{\text{nourishment}}$
15. <input type="checkbox"/> Coastal Banks	a. linear feet	b. linear feet		
16. <input type="checkbox"/> Rocky Intertidal Shores	a. square feet	b. square feet		
17. <input type="checkbox"/> Salt Marshes	a. square feet	b. square feet	c. square feet	d. square feet
18. <input type="checkbox"/> Land Under Salt Ponds	a. square feet	b. square feet		
	c. c/y dredged	d. c/y dredged		
19. <input type="checkbox"/> Land Containing Shellfish	a. square feet	b. square feet	c. square feet	d. square feet
20. <input type="checkbox"/> Fish Runs	Indicate size under Coastal Banks, Inland Bank, Land Under the Ocean, and/or inland Land Under Waterbodies and Waterways, above			
	a. c/y dredged	b. c/y dredged		
21. <input type="checkbox"/> Land Subject to Coastal Storm Flowage	a. square feet	b. square feet		
22. <input type="checkbox"/> Riverfront Area	a. total sq. feet	b. total sq. feet		
Sq ft within 100 ft	c. square feet	d. square feet	e. square feet	f. square feet
Sq ft between 100-200 ft	g. square feet	h. square feet	i. square feet	j. square feet



Massachusetts Department of Environmental Protection  
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**WPA Form 5 – Order of Conditions**

Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

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**B. Findings (cont.)**

\* #23. If the project is for the purpose of restoring or enhancing a wetland resource area in addition to the square footage that has been entered in Section B.5.c (BVW) or B.17.c (Salt Marsh) above, please enter the additional amount here.

23. ☐ Restoration/Enhancement \*:

a. square feet of BVW

b. square feet of salt marsh

24. ☐ Stream Crossing(s):

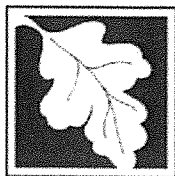
a. number of new stream crossings

b. number of replacement stream crossings

**C. General Conditions Under Massachusetts Wetlands Protection Act**

The following conditions are only applicable to Approved projects.

1. Failure to comply with all conditions stated herein, and with all related statutes and other regulatory measures, shall be deemed cause to revoke or modify this Order.
2. The Order does not grant any property rights or any exclusive privileges; it does not authorize any injury to private property or invasion of private rights.
3. This Order does not relieve the permittee or any other person of the necessity of complying with all other applicable federal, state, or local statutes, ordinances, bylaws, or regulations.
4. The work authorized hereunder shall be completed within three years from the date of this Order unless either of the following apply:
  - a. The work is a maintenance dredging project as provided for in the Act; or
  - b. The time for completion has been extended to a specified date more than three years, but less than five years, from the date of issuance. If this Order is intended to be valid for more than three years, the extension date and the special circumstances warranting the extended time period are set forth as a special condition in this Order.
  - c. If the work is for a Test Project, this Order of Conditions shall be valid for no more than one year.
5. This Order may be extended by the issuing authority for one or more periods of up to three years each upon application to the issuing authority at least 30 days prior to the expiration date of the Order. An Order of Conditions for a Test Project may be extended for one additional year only upon written application by the applicant, subject to the provisions of 310 CMR 10.05(11)(f).
6. If this Order constitutes an Amended Order of Conditions, this Amended Order of Conditions does not extend the issuance date of the original Final Order of Conditions and the Order will expire on \_\_\_\_\_ unless extended in writing by the Department.
7. Any fill used in connection with this project shall be clean fill. Any fill shall contain no trash, refuse, rubbish, or debris, including but not limited to lumber, bricks, plaster, wire, lath, paper, cardboard, pipe, tires, ashes, refrigerators, motor vehicles, or parts of any of the foregoing.



**Massachusetts Department of Environmental Protection  
Bureau of Resource Protection - Wetlands**

**WPA Form 5 – Order of Conditions**

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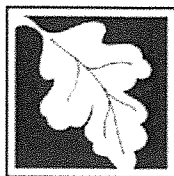
Waltham

City/Town

**C. General Conditions Under Massachusetts Wetlands Protection Act**

8. This Order is not final until all administrative appeal periods from this Order have elapsed, or if such an appeal has been taken, until all proceedings before the Department have been completed.
9. No work shall be undertaken until the Order has become final and then has been recorded in the Registry of Deeds or the Land Court for the district in which the land is located, within the chain of title of the affected property. In the case of recorded land, the Final Order shall also be noted in the Registry's Grantor Index under the name of the owner of the land upon which the proposed work is to be done. In the case of the registered land, the Final Order shall also be noted on the Land Court Certificate of Title of the owner of the land upon which the proposed work is done. The recording information shall be submitted to the Conservation Commission on the form at the end of this Order, which form must be stamped by the Registry of Deeds, prior to the commencement of work.
10. A sign shall be displayed at the site not less than two square feet or more than three square feet in size bearing the words,  

"Massachusetts Department of Environmental Protection" [or, "MassDEP"]  
"File Number            316-0814            "
11. Where the Department of Environmental Protection is requested to issue a Superseding Order, the Conservation Commission shall be a party to all agency proceedings and hearings before MassDEP.
12. Upon completion of the work described herein, the applicant shall submit a Request for Certificate of Compliance (WPA Form 8A) to the Conservation Commission.
13. The work shall conform to the plans and special conditions referenced in this order.
14. Any change to the plans identified in Condition #13 above shall require the applicant to inquire of the Conservation Commission in writing whether the change is significant enough to require the filing of a new Notice of Intent.
15. The Agent or members of the Conservation Commission and the Department of Environmental Protection shall have the right to enter and inspect the area subject to this Order at reasonable hours to evaluate compliance with the conditions stated in this Order, and may require the submittal of any data deemed necessary by the Conservation Commission or Department for that evaluation.
16. This Order of Conditions shall apply to any successor in interest or successor in control of the property subject to this Order and to any contractor or other person performing work conditioned by this Order.



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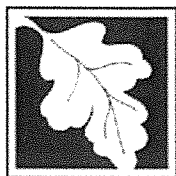
**C. General Conditions Under Massachusetts Wetlands Protection Act (cont.)**

17. Prior to the start of work, and if the project involves work adjacent to a Bordering Vegetated Wetland, the boundary of the wetland in the vicinity of the proposed work area shall be marked by wooden stakes or flagging. Once in place, the wetland boundary markers shall be maintained until a Certificate of Compliance has been issued by the Conservation Commission.
18. All sedimentation barriers shall be maintained in good repair until all disturbed areas have been fully stabilized with vegetation or other means. At no time shall sediments be deposited in a wetland or water body. During construction, the applicant or his/her designee shall inspect the erosion controls on a daily basis and shall remove accumulated sediments as needed. The applicant shall immediately control any erosion problems that occur at the site and shall also immediately notify the Conservation Commission, which reserves the right to require additional erosion and/or damage prevention controls it may deem necessary. Sedimentation barriers shall serve as the limit of work unless another limit of work line has been approved by this Order.
19. The work associated with this Order (the "Project")
  - (1) ☒ is subject to the Massachusetts Stormwater Standards
  - (2) ☐ is NOT subject to the Massachusetts Stormwater Standards

**If the work is subject to the Stormwater Standards, then the project is subject to the following conditions:**

- a) All work, including site preparation, land disturbance, construction and redevelopment, shall be implemented in accordance with the construction period pollution prevention and erosion and sedimentation control plan and, if applicable, the Stormwater Pollution Prevention Plan required by the National Pollution Discharge Elimination System Construction General Permit as required by Stormwater Condition 8. Construction period erosion, sedimentation and pollution control measures and best management practices (BMPs) shall remain in place until the site is fully stabilized.
- b) No stormwater runoff may be discharged to the post-construction stormwater BMPs unless and until a Registered Professional Engineer provides a Certification that:
  - i. all construction period BMPs have been removed or will be removed by a date certain specified in the Certification. For any construction period BMPs intended to be converted to post construction operation for stormwater attenuation, recharge, and/or treatment, the conversion is allowed by the MassDEP Stormwater Handbook BMP specifications and that the BMP has been properly cleaned or prepared for post construction operation, including removal of all construction period sediment trapped in inlet and outlet control structures;
  - ii. as-built final construction BMP plans are included, signed and stamped by a Registered Professional Engineer, certifying the site is fully stabilized;
  - iii. any illicit discharges to the stormwater management system have been removed, as per the requirements of Stormwater Standard 10;





**Massachusetts Department of Environmental Protection  
Bureau of Resource Protection - Wetlands**

**WPA Form 5 – Order of Conditions**

Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

Provided by MassDEP:

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**C. General Conditions Under Massachusetts Wetlands Protection Act (cont.)**

iv. all post-construction stormwater BMPs are installed in accordance with the plans (including all planting plans) approved by the issuing authority, and have been inspected to ensure that they are not damaged and that they are in proper working condition;

v. any vegetation associated with post-construction BMPs is suitably established to withstand erosion.

c) The landowner is responsible for BMP maintenance until the issuing authority is notified that another party has legally assumed responsibility for BMP maintenance. Prior to requesting a Certificate of Compliance, or Partial Certificate of Compliance, the responsible party (defined in General Condition 18(e)) shall execute and submit to the issuing authority an Operation and Maintenance Compliance Statement ("O&M Statement") for the Stormwater BMPs identifying the party responsible for implementing the stormwater BMP Operation and Maintenance Plan ("O&M Plan") and certifying the following:

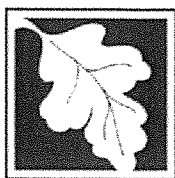
i.) the O&M Plan is complete and will be implemented upon receipt of the Certificate of Compliance, and

ii.) the future responsible parties shall be notified in writing of their ongoing legal responsibility to operate and maintain the stormwater management BMPs and implement the Stormwater Pollution Prevention Plan.

d) Post-construction pollution prevention and source control shall be implemented in accordance with the long-term pollution prevention plan section of the approved Stormwater Report and, if applicable, the Stormwater Pollution Prevention Plan required by the National Pollution Discharge Elimination System Multi-Sector General Permit.

e) Unless and until another party accepts responsibility, the landowner, or owner of any drainage easement, assumes responsibility for maintaining each BMP. To overcome this presumption, the landowner of the property must submit to the issuing authority a legally binding agreement of record, acceptable to the issuing authority, evidencing that another entity has accepted responsibility for maintaining the BMP, and that the proposed responsible party shall be treated as a permittee for purposes of implementing the requirements of Conditions 18(f) through 18(k) with respect to that BMP. Any failure of the proposed responsible party to implement the requirements of Conditions 18(f) through 18(k) with respect to that BMP shall be a violation of the Order of Conditions or Certificate of Compliance. In the case of stormwater BMPs that are serving more than one lot, the legally binding agreement shall also identify the lots that will be serviced by the stormwater BMPs. A plan and easement deed that grants the responsible party access to perform the required operation and maintenance must be submitted along with the legally binding agreement.

f) The responsible party shall operate and maintain all stormwater BMPs in accordance with the design plans, the O&M Plan, and the requirements of the Massachusetts Stormwater Handbook.



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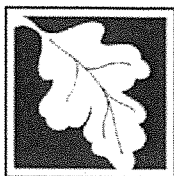
**C. General Conditions Under Massachusetts Wetlands Protection Act (cont.)**

- g) The responsible party shall:
  - 1. Maintain an operation and maintenance log for the last three (3) consecutive calendar years of inspections, repairs, maintenance and/or replacement of the stormwater management system or any part thereof, and disposal (for disposal the log shall indicate the type of material and the disposal location);
  - 2. Make the maintenance log available to MassDEP and the Conservation Commission ("Commission") upon request; and
  - 3. Allow members and agents of the MassDEP and the Commission to enter and inspect the site to evaluate and ensure that the responsible party is in compliance with the requirements for each BMP established in the O&M Plan approved by the issuing authority.
- h) All sediment or other contaminants removed from stormwater BMPs shall be disposed of in accordance with all applicable federal, state, and local laws and regulations.
- i) Illicit discharges to the stormwater management system as defined in 310 CMR 10.04 are prohibited.
- j) The stormwater management system approved in the Order of Conditions shall not be changed without the prior written approval of the issuing authority.
- k) Areas designated as qualifying pervious areas for the purpose of the Low Impact Site Design Credit (as defined in the MassDEP Stormwater Handbook, Volume 3, Chapter 1, Low Impact Development Site Design Credits) shall not be altered without the prior written approval of the issuing authority.
- l) Access for maintenance, repair, and/or replacement of BMPs shall not be withheld. Any fencing constructed around stormwater BMPs shall include access gates and shall be at least six inches above grade to allow for wildlife passage.

Special Conditions (if you need more space for additional conditions, please attach a text document):

**see attached**

- 20. For Test Projects subject to 310 CMR 10.05(11), the applicant shall also implement the monitoring plan and the restoration plan submitted with the Notice of Intent. If the conservation commission or Department determines that the Test Project threatens the public health, safety or the environment, the applicant shall implement the removal plan submitted with the Notice of Intent or modify the project as directed by the conservation commission or the Department.



Massachusetts Department of Environmental Protection  
Bureau of Resource Protection - Wetlands

## WPA Form 5 – Order of Conditions

Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

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### D. Findings Under Municipal Wetlands Bylaw or Ordinance

1. Is a municipal wetlands bylaw or ordinance applicable? ☐ Yes ☒ No
2. The \_\_\_\_\_ hereby finds (check one that applies):

Conservation Commission

- a. ☐ that the proposed work cannot be conditioned to meet the standards set forth in a municipal ordinance or bylaw, specifically:

1. Municipal Ordinance or Bylaw

2. Citation

Therefore, work on this project may not go forward unless and until a revised Notice of Intent is submitted which provides measures which are adequate to meet these standards, and a final Order of Conditions is issued.

- b. ☐ that the following additional conditions are necessary to comply with a municipal ordinance or bylaw:

1. Municipal Ordinance or Bylaw

2. Citation

3. The Commission orders that all work shall be performed in accordance with the following conditions and with the Notice of Intent referenced above. To the extent that the following conditions modify or differ from the plans, specifications, or other proposals submitted with the Notice of Intent, the conditions shall control.

The special conditions relating to municipal ordinance or bylaw are as follows (if you need more space for additional conditions, attach a text document):

See attached "Findings" document for additional information.



Massachusetts Department of Environmental Protection  
Bureau of Resource Protection - Wetlands

**WPA Form 5 – Order of Conditions**

Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

Provided by MassDEP:  
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**E. Signatures**

This Order is valid for three years, unless otherwise specified as a special condition pursuant to General Conditions #4, from the date of issuance.

Please indicate the number of members who will sign this form.

This Order must be signed by a majority of the Conservation Commission.

The Order must be mailed by certified mail (return receipt requested) or hand delivered to the applicant. A copy also must be mailed or hand delivered at the same time to the appropriate Department of Environmental Protection Regional Office, if not filing electronically, and the property owner, if different from applicant.

16 March 2023

1. Date of Issuance

5

2. Number of Signers

Philip Moser

Signature

Philip Moser, Chair

Printed Name

Signature

William Doyle, Vice Chair

Printed Name

Signature

Gerard Dufromont

Printed Name

Signature

Bradley Baker

Printed Name

Signature

Michael Donovan

Printed Name

Signature

Louis Andrews

Printed Name

Signature

Alexander Sbordone

Printed Name

Signature

Printed Name

☒ by hand delivery on

☐ by certified mail, return receipt requested, on

Date

Date



**Massachusetts Department of Environmental Protection  
Bureau of Resource Protection - Wetlands**

**WPA Form 5 – Order of Conditions**

Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

Provided by MassDEP:

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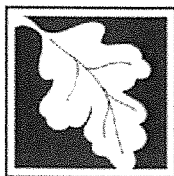
City/Town

## **F. Appeals**

The applicant, the owner, any person aggrieved by this Order, any owner of land abutting the land subject to this Order, or any ten residents of the city or town in which such land is located, are hereby notified of their right to request the appropriate MassDEP Regional Office to issue a Superseding Order of Conditions. The request must be made by certified mail or hand delivery to the Department, with the appropriate filing fee and a completed Request for Departmental Action Fee Transmittal Form, as provided in 310 CMR 10.03(7) within ten business days from the date of issuance of this Order. A copy of the request shall at the same time be sent by certified mail or hand delivery to the Conservation Commission and to the applicant, if he/she is not the appellant.

Any appellants seeking to appeal the Department's Superseding Order associated with this appeal will be required to demonstrate prior participation in the review of this project. Previous participation in the permit proceeding means the submission of written information to the Conservation Commission prior to the close of the public hearing, requesting a Superseding Order, or providing written information to the Department prior to issuance of a Superseding Order.

The request shall state clearly and concisely the objections to the Order which is being appealed and how the Order does not contribute to the protection of the interests identified in the Massachusetts Wetlands Protection Act (M.G.L. c. 131, § 40), and is inconsistent with the wetlands regulations (310 CMR 10.00). To the extent that the Order is based on a municipal ordinance or bylaw, and not on the Massachusetts Wetlands Protection Act or regulations, the Department has no appellate jurisdiction.



**Massachusetts Department of Environmental Protection  
Bureau of Resource Protection - Wetlands**

**WPA Form 5 – Order of Conditions**

Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

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## G. Recording Information

Prior to commencement of work, this Order of Conditions must be recorded in the Registry of Deeds or the Land Court for the district in which the land is located, within the chain of title of the affected property. In the case of recorded land, the Final Order shall also be noted in the Registry's Grantor Index under the name of the owner of the land subject to the Order. In the case of registered land, this Order shall also be noted on the Land Court Certificate of Title of the owner of the land subject to the Order of Conditions. The recording information on this page shall be submitted to the Conservation Commission listed below.

Conservation Commission

Detach on dotted line, have stamped by the Registry of Deeds and submit to the Conservation Commission.

To:

Conservation Commission

Please be advised that the Order of Conditions for the Project at:

Project Location

MassDEP File Number

Has been recorded at the Registry of Deeds of:

County

Book

Page

for:

Property Owner

and has been noted in the chain of title of the affected property in:

Book

Page

In accordance with the Order of Conditions issued on:

Date

If recorded land, the instrument number identifying this transaction is:

Instrument Number

If registered land, the document number identifying this transaction is:

Document Number

Signature of Applicant



**Massachusetts Department of Environmental Protection**  
Bureau of Resource Protection - Wetlands

**Request for Departmental Action Fee  
Transmittal Form**

Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

DEP File Number:

316-0814

Provided by DEP

**A. Request Information**

1. Location of Project

a. Street Address \_\_\_\_\_ b. City/Town, Zip \_\_\_\_\_  
c. Check number \_\_\_\_\_ d. Fee amount \_\_\_\_\_

2. Person or party making request (if appropriate, name the citizen group's representative):

Name \_\_\_\_\_  
Mailing Address \_\_\_\_\_  
City/Town \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_  
Phone Number \_\_\_\_\_ Fax Number (if applicable) \_\_\_\_\_

3. Applicant (as shown on Determination of Applicability (Form 2), Order of Resource Area Delineation (Form 4B), Order of Conditions (Form 5), Restoration Order of Conditions (Form 5A), or Notice of Non-Significance (Form 6)):

Name \_\_\_\_\_  
Mailing Address \_\_\_\_\_  
City/Town \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_  
Phone Number \_\_\_\_\_ Fax Number (if applicable) \_\_\_\_\_

4. DEP File Number:

\_\_\_\_\_

**B. Instructions**

1. When the Departmental action request is for (check one):

- ☐ Superseding Order of Conditions – Fee: \$120.00 (single family house projects) or \$245 (all other projects)
- ☐ Superseding Determination of Applicability – Fee: \$120
- ☐ Superseding Order of Resource Area Delineation – Fee: \$120

**Important:**  
When filling out forms on the computer, use only the tab key to move your cursor - do not use the return key.







**Massachusetts Department of Environmental Protection**  
Bureau of Resource Protection - Wetlands

## **Request for Departmental Action Fee Transmittal Form**

Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

DEP File Number:

316-0814

Provided by DEP

### **B. Instructions (cont.)**

Send this form and check or money order, payable to the *Commonwealth of Massachusetts*, to:

Department of Environmental Protection  
Box 4062  
Boston, MA 02211

2. On a separate sheet attached to this form, state clearly and concisely the objections to the Determination or Order which is being appealed. To the extent that the Determination or Order is based on a municipal bylaw, and not on the Massachusetts Wetlands Protection Act or regulations, the Department has no appellate jurisdiction.
3. Send a **copy** of this form and a **copy** of the check or money order with the Request for a Superseding Determination or Order by certified mail or hand delivery to the appropriate DEP Regional Office (see <https://www.mass.gov/service-details/massdep-regional-offices-by-community>).
4. A copy of the request shall at the same time be sent by certified mail or hand delivery to the Conservation Commission and to the applicant, if he/she is not the appellant.





**Waltham Conservation Commission  
119 School Street  
Waltham, MA 02451-4596**

**SPECIAL ORDER OF CONDITIONS (v1.4)  
AS ISSUED BY THE WALTHAM CONSERVATION COMMISSION**

**DEP File Number:** 316-0814  
**Applicant:** Kim Scott – City of Waltham – Recreation Department  
**Location:** 190 & 282 Trapelo Road  
**Date of Issuance:** 16 March 2023

**Violation of any condition stated herein may result in Enforcement Action.**

**21. RECORDING AND ADMINISTRATION**

A. Prior to any work on the site, or within six (6) weeks of the date of this Order, whichever comes first, this Order of Conditions and relevant attachments shall be recorded at the Middlesex Registry of Deeds or Land Court, and notice filed with the Commission, pursuant to General Condition 9. Failure to do so shall be deemed cause to revoke this Order.

B. In advance of any work on this project, the applicant shall notify the Commission, and at the request of the Commission, shall arrange an on-site conference among the Commission, the contractor, and the applicant to ensure that all of the conditions of this Order are understood. For projects located within the Cambridge surface water supply watershed, the applicant shall also notify Cambridge Water Department.

C. This Order shall be made a part of all contracts and subcontracts dealing with the work proposed, and shall supersede all other conflicting contract requirements. Except where modified by the following Conditions, all work shall be performed in accordance with the plans and the Notice of Intent. Where a conflict exists between the referenced plans and these Conditions, the Conditions will govern.

D. This Order shall apply to and be binding upon the applicant, its employees, and all successors and assigns in interest or control.

E. Prior to any work being done on the project site, the applicant shall inform the Waltham Conservation Commission in writing of the names, email and mailing addresses, and business and mobile phone numbers of both the project supervisor who will be responsible for ensuring on-site compliance with this order and his/her alternate. The applicant shall also notify the Commission in writing of any changes in this information.

F. Any errors found in the plans or information submitted by the applicant shall be considered as changes, and the procedures outlined in General Condition 14 shall be followed.

G. In conjunction with the sale of any portion of the site covered by this Order of Conditions, the applicant shall submit to the Commission a signed statement by the buyer that he/she is aware of outstanding Orders of Conditions.

H. The Commission may authorize its designated agent to act on its behalf in determining compliance.

I. Special Conditions 25A through 25K shall apply in perpetuity and shall not expire with the issuance of a Certificate of Compliance for this project.

## **22. PRIOR TO COMMENCEMENT OF WORK**

The following conditions, in addition to 21A, 21B, 21C, and 21E, are requirements prior to the commencement of work:

A. Prior to any work on site, the wetland resource area delineation, limit of work delineation, tree protection measures, and erosion controls shall all be in place. The applicant shall notify the Conservation Commission when all of these controls are in place, and, if requested by the Commission, shall arrange an on-site conference among the Commission, the contractor, and the applicant to review same. For projects located within the Cambridge surface water supply watershed, the applicant shall also notify Cambridge Water Department.

B. The wetland, riparian, and floodplain resource areas and proposed limit of work shall be clearly marked with stakes, flags or fencing. Such markers will be maintained until all construction on the site's perimeter is complete. All workers shall be informed that no construction activity is to occur beyond this line at any time.

C. The applicant shall preserve and protect all sizeable (DBH of 6 in. or greater) trees, including root systems, that are located in whole or in part within resource areas, 100 ft. buffer zones, or 200 ft. riparian zones, during the demolition and construction phases of this project, except where one or both of the following exceptions are met:

i. Explicit permission has been granted by the Conversation Commission to remove such trees.

ii. The entire tree including root systems is outside the limit of work and therefore already protected by the limit-of-work stakes, flags, or fencing.

For sizeable trees that are to be preserved, the applicant shall strap protective boards around the trunk from ground level to a height of at least 8 feet. The applicant shall install fencing below the perimeter of the crown of the tree, or at a distance of at least 18 in. from the trunk for each inch of trunk diameter, whichever is greater, to prevent damage to roots or compaction of soil around roots. Such measures shall be maintained until all construction, earthwork, and grading is complete, and then shall be removed and legally disposed of off-site. Trees that are approved for removal shall be cut off near ground level; no removal of stumps or roots shall occur without written approval of the Conservation Commission.

D. Erosion controls as shown on the approved plans and described herein shall be installed.

i. Perimeter protection consisting of an erosion control barrier of a filter fabric fence backed by a row of double-staked straw bales (not hay), straw wattles, filter socks, or other approved perimeter protection described in the NOI and shown in the referenced plans, shall be placed between all construction activities and wetland areas or rivers, in accordance with Erosion and Sedimentation Guidelines for Urban and Suburban Areas, Mass. DEP, March 1997 or current version. Silt fencing (if proposed) shall be entrenched 4 in. into the ground and double staked.

ii. Stormwater catch basins located adjacent to the site that may receive stormwater runoff from the site shall be protected. These protections shall be installed in accordance with the plans approved by this Order and/or per the direction of the Waltham Conservation Commission. Silt sacks (not filter fabric) installed and properly maintained generally meet this requirement. Where curb inlets are present, curb inlet filters shall also be provided. Silt sacks, if required for the project, shall be emptied at least once every two weeks and whenever silt and debris have collected to a level that is affecting the functionality of the silt sack and/or catch basins. Silt sacks shall be maintained in good working order and shall be repaired or replaced when damaged.

iii. The applicant shall regularly clean the closest catch basins in every direction of the construction site, and regularly clean the city streets between the site and said catch basins, for the duration of construction. The cleaning shall be sufficiently thorough and frequent to prevent dirt tracked into the pavement from muddying the stormwater during rainfall.

iv. Upon completion of the project, the applicant shall remove and legally dispose of off-site all temporary erosion controls and other materials determined to be detrimental to the resource areas if left in place permanently.

E. The applicant shall have on hand at the start of any soil disturbance, removal or stockpiling, a minimum of 20% additional straw bales, straw wattles, filter socks, silt fencing, or other approved perimeter protection system, in good condition, and sufficient stakes for installation. Said items shall be used only for the control of emergency erosion problems and shall not be used for the normal control of erosion described in Condition "D".

## **23. DURING WORK**

A. Accepted engineering and construction standards and procedures for protection of the resource area shall be followed in the completion of this project.

B. A copy of this Order of Conditions, all construction plans, and wetland replication plans if applicable, shall be maintained on site for the duration of any site work and made available to any person doing work on the site.

C. Site grading and construction shall be scheduled to avoid periods of high water. Once begun, grading and construction shall move uninterrupted to completion to avoid erosion and sedimentation of wetlands.

D. Any dewatering or drawdown activities on the project shall not directly discharge into a resource area or as surface flow. All discharges, including those to a storm drainage system, shall make use of a sedimentation tank or similar device to remove sediment before the water is released.

E. As soon as possible during construction, all disturbed areas in the resource areas or 100 ft. buffer zone shall be brought to final finished grade and stabilized permanently against erosion. This shall be done either by sodding, or by loaming, seeding, and mulching according to Natural Resources Conservation Service (formerly USDA) Soil Conservation Service Guidelines. If the latter course is chosen, stabilization will be considered completed once the surface shows complete vegetative cover. Bare, graded ground that cannot be permanently

stabilized within thirty (30) days shall be stabilized by temporary measures. Stockpiled ground shall be stabilized as described in Condition 23.G below.

F. No earthen embankment in the resource areas or 100 ft. buffer zone shall have a post-construction slope steeper than 2:1 unless engineered slope stabilization is provided.

G. There shall be no stockpiling of soil, sand, or similar unconsolidated material within the resource areas or 100 ft. buffer zone, unless otherwise authorized by these Conditions or by the Waltham Conservation Commission. Any stockpile of soil, sand, or similar materials that is permitted within said areas shall be enclosed within a line of entrenched and staked erosion control socks or silt fence in addition to the perimeter erosion controls for the site. In the event that all earthwork ceases for more than 15 days or if inclement weather is imminent, all exposed stockpiled soils shall be stabilized with a temporary vegetative cover, tarp, or other erosion control acceptable to the Waltham Conservation Commission.

H. There shall be no discharge or spillage of fuel, oil, or other pollutants (including but not limited to: paint stripper, soap, detergent, other cleaning chemicals, industrial solvents, strong acids and bases, etc.) into any resource areas or 100 ft. buffer zone. The applicant shall take all reasonable precautions to prevent the release of pollutants by ignorance, accident, or vandalism. No fueling or maintenance of vehicles shall be allowed within resource areas or 100 ft. buffer zone, unless otherwise authorized by the Conditions or the Waltham Conservation Commission.

I. No plants, shrubs, or trees listed on the latest Massachusetts Department of Agricultural Resources Prohibited Plant List (invasive species) may be brought onto or planted anywhere on the property. (Plant List is available at <http://www.mass.gov/eea/agencies/agr/farm-products/plants/massachusetts-prohibited-plant-list.html>).

J. Planting within the resource areas and 100 ft. buffer zone shall be limited to species that are native to Massachusetts.

## **24. POST CONSTRUCTION**

Within 1 year of completion of construction, final soil stabilization, and planting, but in no case later than the expiration date on the Order of Conditions, the Applicant shall:

A. Submit the following to the Waltham Conservation Commission to request a Certificate of Compliance (COC):

i. A completed Request for Certificate of Compliance – WPA Form 8A;

ii. In the case of commercial and multi-family residential projects, and all projects that involve re-grading inside a flood zone or flood plain: an as-built plan (including grading) and a signed letter from a licensed professional certifying that the work has been completed in substantial compliance with the approved plans and the Order of Conditions.

B. Remove temporary erosion controls (silt fence and straw wattles), unless specifically directed otherwise by the Conservation Commission, and legally dispose of offsite.

## **25. UPON COMPLETION OF WORK - CONDITIONS IN PERPETUITY**

The following Conditions are ongoing and do not expire with the expiration of the Order of Conditions or the \_\_\_\_\_

issuance or a Certificate of Compliance.

A. No underground storage of fuel oil or other petroleum products shall be allowed within the resource areas or 100 ft. buffer zone. There shall be no storage of petroleum products within the resource areas or 100 ft. buffer zone on the site at any time, except to the extent reasonably necessary for the ordinary uses of the occupants and maintenance staff of the property (e.g., enclosed storage of fuel for landscaping and snow removal equipment for use on the property, and the fuel and oil contained within vehicles, where alternate storage and parking locations outside the resource areas or 100 ft. buffer zone are not practicable). For single family homes, this restriction limits quantities to those commensurate with maintaining a single family home.

B. Fertilizer, pesticides, and herbicides shall not be used within a resource area or 100 ft. buffer zone, except where herbicides or pesticides are used in a limited application to target invasive species where specifically approved by the Conservation Commission. For the duration of each landscaping season, signs of a minimum of two square feet that are reasonably legible and that state such restriction, shall be posted and maintained at all landscaper access points to all landscaped areas that occur in the above-mentioned areas, on all except single-family residential properties.

C. Salt and other chemical de-icing shall not be used within a resource area or 100 ft. buffer zone. For the duration of each snow removal season, signs of a minimum of two square feet that are reasonably legible and that state such restriction shall be posted and maintained at all vehicle entrances to the above mentioned area on all except single-family residential properties.

D. Sand used for winter traction in paved areas shall be removed periodically during the winter and by May 1<sup>st</sup> of each year. Records of cleaning shall be maintained on site.

E. There shall be no discharge or spillage of fuel, oil, or other pollutants (including but not limited to: paint stripper, soap or detergent, other cleaning chemicals, industrial solvents, strong acids and bases, etc.) into any resource areas or 100 ft. buffer zone. The applicant shall take all reasonable precautions to prevent the release of pollutants by ignorance, accident, or vandalism. No fueling or maintenance of vehicles shall be allowed within a resource area or 100 ft. buffer zone unless otherwise authorized by the Conditions or the Waltham Conservation Commission.

F. The storm drainage system shall be equipped with gas and oil traps.

G. Following the completion of construction and grading, all exposed soils within the resource areas or 100 ft. buffer zone must be adequately stabilized and maintained in a stable condition. Gradients of 3 units horizontal to 1 unit vertical or steeper shall be stabilized with a permanent vegetative cover, unless engineered slope stabilization is provided. Bark mulch or wood mulch may in appropriate circumstances (e.g., those not subjected to erosion from concentrated flow) be used to provide adequate stabilization on slopes with a gradient less than 3:1.

H. All stormwater infrastructure, green infrastructure, and infiltration devices must be maintained per manufacturer specifications and an approved Operations and Maintenance plan, or Long-Term Pollution Protection Plan. The plan shall include inspection by the applicant no less than once every six months, and cleaning and maintenance as needed based on inspection. The approved Operations and Maintenance Plan shall be included in the Order of Conditions recorded at the Registry of Deeds. Records of said inspection and cleaning shall be maintained on site and made available to the Commission upon request.



I. Any fencing within a resource area or 100 ft. buffer zone shall have a continuous gap, interrupted only at main support posts, between the bottom of the fence and the ground. The bottom edge shall be free of sharp edges and sharp protrusions. The gap shall be at least 6 in., except where a hazard to small children (e.g., falling or drowning hazard) exists on the other side of the fence, in which case the gap shall be 4 in. The one permitted exception is that fencing and netting required to keep golf balls contained within the chipping range is permitted to extend down to ground level along the majority of its length, provided that gaps 6 in. high by a minimum of 4 ft. wide are provided at ground level at the corners of the chipping range and the midpoint of the long run along the west side of the chipping range, and a gate shall be provided at the southwest corner of the chipping range.

J. Any plantings within a resource area or 100 ft. buffer zones, or as part of any mitigation plan, shall be maintained and successfully established, and the planting area shall be kept free of invasive plant species. In addition, all areas of existing vegetation within 16 ft. of the limit of work, or within 16 ft. of the planting area, shall be rid of, and maintained free of, invasive plant species. Replanting shall be provided in case of significant failure, defined as greater than 25% mortality of any strata.

K. Sealers containing coal tar pitch shall not be used in maintenance of asphalt pavement. Asphalt-based sealers are permissible.

## **26. SITE-SPECIFIC CONDITIONS**

A. Prior to starting construction, the applicant must:

- i. Provide copies of the schematic design for the entire site, and this Order of Conditions, to the MEPA office, and,
- ii. Obtain written confirmation from the Secretary of Energy and Environmental Affairs (EEA) as to whether a MEPA filing is required. If required by EEA, complete the filing, including associated Environmental Impact Report and public input, and obtain certification thereof from EEA; and,
- iii. Provide copies of the above documents to the Conservation Commission.

B. Prior to starting construction, the applicant must provide copies of a duly authorized and recorded Conservation Restriction (CR), and written approval of the project from the CR holder, to the Conservation Commission.

C. Prior to the start of construction, the applicant must develop a written inspection and rescue plan with input from Waltham Police Department's Animal Control Officer or other reputable wildlife experts, submit the proposed plan along with copies of the input received to the Conservation Commission, and receive the Commission's approval of the plan. In perpetuity, the applicant must daily inspect the facility for entangled birds, maintain signage at the vending area identifying the wildlife rescue contact information, promptly implement the rescue plan when the need arises, and notify the Conservation Commission of the date, species, rescue efforts, and outcome each time that a bird becomes entangled.

D. In perpetuity, no anticoagulant or other poison shall be used for animal control in any jurisdictional area on the property. If the applicant uses these methods for animal control elsewhere on the property, the applicant shall track and annually submit to the Commission, documentation of the quantity and locations of all poison bait boxes used on the property, the number and locations of dead predators found, and the findings of state wildlife officials regarding the causes of death, so that the Commission has the opportunity to review and confirm that they are located outside its jurisdictional areas.

E. In perpetuity, no less than twice per year, the applicant shall walk the perimeter of the chipping range outside the fencing and netting and pick up any golf balls from the resource areas and buffer zone.

F. The applicant will quantify vegetation impacts in the jurisdictional area: the proposed number of trees to be cut down and the area of wild vegetation to be cleared. Applicant will replace invasive trees 1:1 with native trees. Applicant will replace trees that are neither native nor invasive 2:1 with native trees. Applicant will replace native trees 3:1 with native trees. Applicant will provide a proportional number of shrubs and native groundcover plantings (or seed with native woodland seed mix). All restoration plantings must be located in the jurisdictional area. Applicant will submit a planting plan for approval by the Commission documenting compliance with this condition.

G. The applicant will revise the design so that the fence and golf netting currently shown 25 ft. away from the wetland on the west side of the chipping range is relocated to be a minimum of 40 ft. from this wetland, without moving the developed footprint farther into the buffer zone in any other areas of the site. Revised plans will be submitted documenting compliance with this condition.

H. The applicant will remove the existing fence on the opposite side of the intermittent stream along the property line with Forest Street Park. Revised plans will be submitted documenting compliance with this condition.

**Fernald Center – 2023 redevelopment to recreational facility**  
Waltham Conservation Commission permitting

1. Fencing requires a 6 in. gap underneath to avoid interfering with wildlife movement; this is one of Waltham ConCom's standard conditions. The applicant requests an exception for the golf netting to prevent golf balls from entering the resource area. Please revise the plans to show 6 in. high by a minimum of 4 ft. wide gaps at the bottom of the golf netting at the corners of the chipping range and the midpoints of long runs. The Commission will revise its standard condition to allow the remainder of the golf netting / fencing to extend down to the ground.

Findings and Conditions – updated 3/2/2023

#	Finding	Condition
1	The proposed project is the first phase of a 120-acre redevelopment by the City of Waltham, for which the schematic design was approved by the Recreation Board on July 20, 2022. The schematic design includes approximately 20 program elements including artificial turf fields, sports courts, amphitheater, golf facilities, train rides, and playgrounds, served by 8 parking lots. Based on comparison of the schematic design to recent aerial photos, forest comprises a small minority percentage of the existing land cover, but several acres of the remaining forest are proposed to be cleared. In June 2022, Waltham City Council approved, without discussion, the Mayor's request to appropriate \$200,000 for tree and brush removal at the site, but the proposed locations of that tree and brush removal have not been publicly disclosed. Wetlands Protection Act jurisdictional areas occur in various portions of the site, but much of the site is non-jurisdictional. A playground parking lot and an artificial turf field are shown directly adjacent to wetlands, and multiple stream crossings are shown, but those impacts have not yet been quantified. At this time, the applicant is only requesting Conservation Commission review of one portion of the first phase, consisting of a golf chipping range and associated access road and parking lot. The Conservation Commission agrees with the mapped jurisdictional areas shown within the limits of work proposed for the current phase. Additional wetland resource areas exist elsewhere on the property but are not currently mapped on the overall site plan, and will need to be delineated and a separate Notice of Intent filed before proceeding with other phases.	N/A
2	301 CMR 11 requires filing with MEPA for any land alteration greater than 50 acres that requires a state permit or seeks state funding. Land alterations between 25 and 50 acres may also require MEPA filings, at the discretion of the Secretary of Energy and Environmental Affairs. General Condition 1 of WPA Form 5 requires compliance with all related statutes and other regulatory measures. The transparency provided by an Environmental Impact	Prior to starting construction, the applicant must: (1) Provide copies of the schematic design for the entire site, and this Order



	<p>Report, and public input included in the MEPA process, could guide land use decisions in a direction that reduce the impact on wetland resource areas, and thereby serve to further protect the interests of the Wetlands Protection Act.</p>	<p>of Conditions, to the MEPA office.</p> <p>-and-</p> <p>(2) Obtain written confirmation from the Secretary of Energy and Environmental Affairs (EEA) as to whether a MEPA filing is required. If required by EEA, complete the filing, including associated Environmental Impact Report and public input, and obtain certification thereof from EEA.</p> <p>-and-</p> <p>(3) Provide copies of the above documents to the Conservation Commission.</p>
3	<p>The City of Waltham purchased the property in December 2014 using Community Preservation Act (CPA) funds. MGL Chapter 44B Section 12 requires parcels acquired using these funds to be bound by a permanent restriction limiting the use to the purpose for which it was required, i.e., Conservation Restrictions (CRs) for land acquired for open space and recreation. General Condition 1 of WPA Form 5 requires compliance with all related statutes and other regulatory measures. Recording of a state-compliant CR, and verification of project compliance by a third-party CR holder, could serve to further protect wetland resource areas.</p>	<p>Prior to starting construction, the applicant must provide copies of a duly authorized and recorded CR, and written approval of the project from the CR holder, to the Conservation Commission.</p>
4	<p>The design for the proposed golf chipping range includes 75 ft. tall netting. Various species of birds including ospreys, sandpipers, red-winged blackbirds, bald eagles, herons, ducks, geese, and kingfishers are a critical part of the ecosystem of freshwater wetlands, streams, and ponds. News articles from around the country and around the world indicate that various species of birds tend to become entangled in golf netting. These sources indicate the height of the netting often poses a challenge for attempts to rescue entangled birds. In 2017, news media described efforts by Waltham Police Department's Animal Control officer to rescue a raptor entangled in sports netting at another municipal recreation facility in north Waltham. During the 2/2/2023 Conservation Commission site visit to the Fernald Center, a great horned owl and multiple hawks were observed in the jurisdictional areas at the edges of the golf chipping range. 310 CRM 10.02(2)(b).2.b indicates that the potential for fencing to interfere with wildlife movement is a legitimate permitting consideration under the Wetlands Protection Act.</p>	<p>Prior to the start of construction, the applicant must develop a written inspection and rescue plan with input from Waltham Police Department's Animal Control Officer or other reputable wildlife experts, submit the proposed plan along with copies of the input received to the Conservation Commission, and receive the Commission's approval of the plan. In perpetuity, the applicant must daily inspect the facility for entangled birds, maintain signage at the vending area</p>

		identifying the wildlife rescue contact information, promptly implement the rescue plan when the need arises, and notify the Conservation Commission of the date, species, rescue efforts, and outcome each time that a bird becomes entangled.
5	<p>Anticoagulant rat poison is a well-documented, frequent cause of death for hawks, owls, foxes, and other predators, including the bald eagle that died in Mt. Feake Cemetery in 2021, and another bald eagle that hatched in Mt. Feake Cemetery in 2016 and died February 28, 2023. The predator mortality caused by ingestion of poisoned rats reduces the ability of ecosystems to naturally control rodent populations. It also poses a threat to pets that may ingest poisoned rats. Older, more environmentally-responsible and humane rodent control measures such as snap traps are still effective and are sometimes used by the City in sensitive areas, and newer eco-friendly technologies have been developed.</p> <p>The City of Waltham's current practice is to place an undisclosed but large number of poison bait boxes throughout much of the city. During the February 6, 2023 public hearing of the Waltham City Council Economic and Community Development Committee, the city official who oversees this program dismissed the idea that anticoagulant poison causes significant predator mortality when poisoned rodents are ingested up the food chain. The official indicated an intention to continue using this method because it is cheaper to refill the poison once every 3 weeks [and leave the poisoned carcasses lying wherever they happen to die], than to re-set snap traps weekly and dispose of the carcasses.</p> <p>Therefore, there is a reasonable likelihood that increased municipal use of the subject property, and the displacement of wildlife affected by the associated development activities, could result in rodent sightings by people, and in response, more poison bait boxes being placed by the City, leading to more wildlife mortality.</p>	<p>In perpetuity, no anticoagulant or other poison shall be used for animal control in any jurisdictional area on the property. If the applicant uses these methods for animal control elsewhere on the property, the applicant shall track and annually submit to the Commission, documentation of the quantity and locations of all poison bait boxes used on the property, the number and locations of dead predators found, and the findings of state wildlife officials regarding the causes of death, so that the Commission has the opportunity to review and confirm that they are located outside its jurisdictional areas.</p>
6		No less than twice per year, the applicant shall walk the perimeter of the chipping range outside the fencing and netting and pick up any golf balls from the resource areas and buffer zone.

7		<p>Revise standard condition 25.I to read as follows:          “Any fencing within a resource area or 100 ft. buffer zone shall have a continuous gap, interrupted only at main support posts, between the bottom of the fence and the ground. The bottom edge shall be free of sharp edges and sharp protrusions. The gap shall be at least 6 in., except where a hazard to small children (e.g., falling or drowning hazard) exists on the other side of the fence, in which case the gap shall be 4 in. The one permitted exception is that fencing and netting required to keep golf balls contained within the chipping range is permitted to extend down to ground level along the majority of its length, provided that gaps 6 in. high by a minimum of 4 ft. wide are provided at ground level at the corners of the chipping range and the midpoint of the long run along the west side of the chipping range, and a gate shall be provided at the southwest corner of the chipping range.”</p>
8		<p>Quantify vegetation impacts in the jurisdictional area – proposed number of trees to be cut down, and area of wild vegetation to be cleared. Replace invasive trees 1:1 with native trees. Replace trees that are neither native nor invasive 2:1 with native trees. Replace native trees 3:1</p>

		<p>with native trees. Provide a proportional number of shrubs and native groundcover plantings (or seed with native woodland seed mix). All restoration plantings must be located in the jurisdictional area. Submit a planting plan for approval by the Commission documenting compliance with this condition.</p>
9		<p>Revise the design so that the fence and golf netting currently shown 25 ft. away from the wetland on the west side of the chipping range is relocated to be a minimum of 40 ft. from this wetland, without moving the developed footprint farther into the buffer zone in any other areas of the site. Submit revised plans documenting compliance with this condition.</p>
10		<p>Remove the existing fence on the opposite side of the intermittent stream along the property line with Forest Street Park. Submit revised plans documenting compliance with this condition.</p>